

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	§ Group Art Unit: 2142
Ullman	§
	§ Examiner: Vu, T.
Serial No.: 09/737,431	§
Filing Date: 12/15/2000	§ Atty. Docket #: AUS9-2000-0704- US1
	§
For: Method and system for	
network management with	
redundant monitoring and	
categorization of	
endpoints	

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**APPELLANT'S BRIEF
IN RESPONSE TO OFFICE ACTION UNDER 37 C.F.R. § 41.37**

10 This brief is filed in support of the Notice of Appeal,
filed xx/xx/xxxx, and which appeals the rejection of claims xxxx
from the decision of the examiner dated xx/xx/xxxx.

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is International Business Machines Corporation (IBM).

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II. RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

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III. STATUS OF CLAIMS

Claims 1-24 are pending in this application; claims 1-24 have been finally rejected; and claims 1-24 have been appealed. No claims have been allowed, canceled, or withdrawn.

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IV. STATUS OF AMENDMENTS

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No after-final amendments have been filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A method, system, apparatus, and computer program product are presented for management of a distributed data processing system. Resources within the distributed data processing system are dynamically discovered, and the discovered resources are adaptively monitored using the network management framework. A network or system administrator configures some mission critical endpoints with multiple network interface cards (NICs) and specifies mission critical endpoints, non-mission critical actions, etc. (FIGs. 10A-10B; Specification, pages 55-56). During status collection activities associated with network or system management activities, the categorization of an endpoint as a mission-critical or non-mission critical endpoint affects the manner in which the status collection activity is performed (FIGs. 10C-10E; pages 57-59). Applications can request the performance of actions at endpoints without regard to the categorization of the endpoint or without regard to the categorization of the requested action, and the network management system routes the action based on whether or not the specified endpoint is a mission critical endpoint.

VI. Grounds of rejection to be reviewed on appeal

The grounds of rejection that are on appeal are:

(A) whether claims 1-24 of the present patent application
5 are properly rejected in a provisional obviousness-type double
patenting rejection over claims 1-21 of co-pending U.S. patent
application 09/737,434, which is also assigned to IBM and has
common co-inventors with the present application;

(B) whether claims 1-24 are anticipated under 35 U.S.C. §
10 102(e) by Schuster et al., "System and method for providing
call-handling services on a data network telephone system", U.S.
Patent No. 6,584,490, filed 12/22/1999, issued 06/24/2003;

(C) whether claims 1-24 are unpatentable under 35 U.S.C. §
103(a) by Alkhatib, "Domain name routing", U.S. Patent No.
15 6,119,171, filed 01/29/1988, issued 09/12/2000, in view of
Schuster et al.;

VII. ARGUMENTS

**VII.A. Were claims 1-24 properly rejected in a provisional
obviousness-type double patenting rejection over co-pending
application 09/737,434?**

MPEP § 804 states the following:

Since the analysis employed in an obviousness-type
double patenting determination parallels the guidelines for
a 35 U.S.C. 103(a) rejection, the factual inquiries set
forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459
30 (1966), that are applied for establishing a background for
determining obviousness under 35 U.S.C. 103 are employed

when making an obviousness-type double patenting analysis.
...

Any obviousness-type double patenting rejection should make clear:

(A) The differences between the inventions defined by the conflicting claims -- a claim in the patent compared to a claim in the application; and

(B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent.

The claims in the two patent applications clearly differ from each other; in fact, one independent claim from each patent application was copied into the Office action. For example, the independent claims of the other patent application include an element similar to "first associating means for associating a mission critical twin endpoint with each mission critical endpoint"; this feature does not appear in the claims of the present patent application. In addition, the independent claims of the present patent application include an element similar to "first determining means for determining that a device within the distributed data processing system has at least a first discovered endpoint representing a first network interface card and a second discovered endpoint representing a second network interface card"; this element does not appear in the claims of the other patent application. The simple fact that the claims in the different patent application may have common elements does not provide a basis for an obviousness-type double patenting rejection.

More importantly, the motivational statement confusingly states: "It was clearly [sic] that a critical twin endpoint or network node with two NIC [sic], each network interface card connects to an endpoint or node (see '431, Fig 2G)." The

rejection does not provide any reasons why a person of ordinary skill in the art would conclude that the invention defined in the

claims of the present patent application is an obvious variation of the invention defined in the claims in the other patent application, as is required by a proper obviousness-type double patenting rejection. The onus is on the Patent Office for
5 explaining the reasoning behind the rejection; without any reasoning against which to argue, Appellant cannot provide any arguments against the hypothetical reasoning. For this and other reasons, Appellant argues that the position of the Examiner should be reversed and that the rejection of the claims
10 should not be upheld.

VII.B. Was 35 U.S.C. § 102(e) properly applied in a rejection of claims 1-24 as being anticipated by Schuster et al.?

15 Arguments in support of common patentability

Claims 1-24 stand and fall together as a single group.

In paragraph 6 on page 2 of the final Office action, the Office Action rejects the set of claims by discussing the elements of independent claim 9. Since the Office action has
20 focused on claim 9 as representative of these independent claims, Appellant provides a rebuttal of the rejection with respect to claim 9 while asserting that the arguments that are provided in support of the patentability of claim 9 are applicable to the other claims.

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Arguments against the prior art rejection

As an initial point, Appellant asserts that the multiple, redundant prior art rejections in the Office action support the contention that the prior art references do not anticipate nor

render obvious the respective claims because the basis for

rejecting the claims has been intentionally obfuscated through multiple rejections that contain indefensible arguments.

Turning to a discussion of the rejection and the claim elements, independent claim 9 reads:

5 9. An apparatus for managing a distributed data processing system, the apparatus comprising:
 configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network
10 management framework;
 discovering means for dynamically discovering endpoints within the distributed data processing system;
 first determining means for determining that a device within the distributed data processing system has at least
15 a first discovered endpoint representing a first network interface card and a second discovered endpoint representing a second network interface card; and
 assigning means for assigning a mission criticality categorization to each discovered endpoint.

20 With respect to the fourth element of claim 9, i.e. "assigning means for assigning a mission criticality categorization to each discovered endpoint", the rejection asserts that the applied prior art discloses the claim element by stating: "[Schuster, assigned categories, col 6, lines 6-12]". The portion of
25 Schuster et al. at column 6, lines 6-12, though, is merely a recitation of related patent applications. This would clearly appear to be some type of error.

30 However, when one tries to discern the reason for the error and then tries to discover the portion of Schuster et al. that may have been intended as the basis for the anticipatory argument, it is impossible to recognize the intentions behind the rejection. For example, the term "assigned categories" does not appear within Schuster et al.. In fact, the word "category"

appears only three times; Schuster et al. states in column 26,
lines 57-63:

As an alternative, the address book entries (and/or appointment book entries in an appointment book application) may be placed into different categories, such as business or personal, etc. Each category could then be assigned a priority level so that incoming calls for a particularly category will be handled according to the assigned priority level.

Since a categorization of address book entries has no relation to the claimed action of "assigning a mission criticality categorization to each discovered endpoint", Appellant asserts that Schuster et al. does not disclose the claimed element.

Rejection is deficient with respect to requirements for a proper anticipation rejection

Schuster et al. clearly does not disclose features as required by the claim language. As stated at MPEP § 2131: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Therefore, a rejection of the claims under 35 U.S.C. § 102(e) has been shown to be improper and insupportable in view of Schuster et al., and claims 1-24 are patentable over Schuster et al.. For this and other reasons, Appellant argues that the position of the Examiner should be reversed and that the rejection of the claims should not be upheld.

VII.B. Was 35 U.S.C. § 103(a) properly applied in a rejection of claims 1-24 as being unpatentable over Alkhatib in view of Schuster et al.?

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Arguments in support of common patentability

Claims 1-24 stand and fall together as a single group.

In paragraph 14 on page 5 of the final Office action, the Office Action rejects the set of claims by discussing the elements of independent claim 9. Since the Office action has focused on claim 9 as representative of these independent claims, Appellant provides a rebuttal of the rejection with respect to claim 9 while asserting that the arguments that are provided in support of the patentability of claim 9 are applicable to the other claims.

Arguments against the prior art rejection

In a manner similar to the obviousness rejection over Schuster et al. which was discussed hereinabove, the obviousness rejection over Alkhatib in view of Schuster et al. relies upon Schuster et al. to disclose the fourth element of claim 9. As argued by Appellant hereinabove, with respect to the fourth element of claim 9, i.e. "assigning means for assigning a mission criticality categorization to each discovered endpoint", the rejection asserts that the applied prior art discloses the claim element by stating: "[Schuster, assigned categories, col 6, lines 6-12]". The portion of Schuster et al. at column 6, lines 6-12, though, is merely a recitation of related patent

applications. This would clearly appear to be some type of error.

However, when one tries to discern the reason for the error and then tries to discover the portion of Schuster et al. that

may have been intended as the basis for the anticipatory argument, it is impossible to recognize the intentions behind the rejection. For example, the term "assigned categories" does not appear within Schuster et al.. In fact, the word "category" appears only three times; Schuster et al. states in column 26, lines 57-63:

As an alternative, the address book entries (and/or appointment book entries in an appointment book application) may be placed into different categories, such as business or personal, etc. Each category could then be assigned a priority level so that incoming calls for a particularly category will be handled according to the assigned priority level.

Since a categorization of address book entries has no relation to the claimed action of "assigning a mission criticality categorization to each discovered endpoint", Appellant asserts that Schuster et al. does not disclose the claimed element. Since Schuster et al. clearly does not disclose features as required by the claim language and as argued in this particular obviousness rejection, Appellant asserts that the obviousness rejection is deficient.

Rejections are deficient with respect to requirements for a proper obviousness rejection

Schuster et al. clearly fails to disclose at least one feature of the present invention as recited within each independent claim, notwithstanding the arguments presented by the Office action, thereby rendering Schuster et al. incapable of being used as a secondary reference as argued by the obviousness rejection. Moreover, a hypothetical combination of Alkhatib and Schuster et al. would fail to reach the claimed

invention of the present patent application. As should be recognized, because the secondary reference in the rejection fails to disclose the

claimed feature against which the reference was applied, and because the references fail to be combinable to produce the claimed invention, the rejection fails to fulfill the requirements of a proper obviousness argument.

5 With respect to claims 1-24 of the present patent application, Appellant respectfully submits that it would not have been obvious for one having ordinary skill in the art to have used the applied prior art references to reach the claimed invention. Hence, a rejection of the claims cannot be based upon
10 the cited prior art to establish a *prima facie* case of obviousness. Therefore, a rejection of the claims under 35 U.S.C. § 103(a) has been shown to be insupportable in view of the cited prior art, and the claims are patentable over the applied references. For this and other reasons, Appellant
15 argues that the position of the Examiner should be reversed and that the rejection of the claims should not be upheld.

VIII. APPENDIX OF CLAIMS

1. A method for managing a distributed data processing system, the method comprising:

5 configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework;

 dynamically discovering endpoints within the distributed data processing system;

10 determining that a device within the distributed data processing system has at least a first discovered endpoint representing a first network interface card and a second discovered endpoint representing a second network interface card; and

15 assigning a mission criticality categorization to each discovered endpoint.

2. The method of claim 1, wherein the step of configuring monitoring parameters further comprises:

20 designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards is a twin network interface card that is to be used for monitoring an associated network interface card; and

25 designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards is not to be used for monitoring.

3. The method of claim 2, wherein the step of assigning a mission criticality categorization to each discovered endpoint further comprises:

in response to a determination that the first discovered endpoint has a monitoring parameter indicating that the first discovered endpoint corresponds to a twin network interface card, specifying that the first discovered endpoint is mission critical twin endpoint; and

in response to a determination that the second discovered endpoint has a monitoring parameter indicating that the second discovered endpoint is not to be used for monitoring, specifying that the second discovered endpoint is mission critical endpoint.

4. The method of claim 3 further comprising:
monitoring discovered endpoints using the network management framework.

5. The method of claim 4 further comprising:

in response to a determination that a discovered endpoint is a mission critical endpoint, determining whether the mission critical endpoint is associated with a mission critical twin endpoint;

in response to a determination that the mission critical endpoint is associated with a mission critical twin endpoint, performing a polling operation on the mission critical twin endpoint; and

updating a status indication parameter for the mission critical twin endpoint.

6. The method of claim 5 further comprising:

determining whether the mission critical endpoint can be polled;

5 in response to a determination that the mission critical endpoint can be polled, performing a polling operation on the mission critical endpoint; and

updating a status indication parameter for the mission critical endpoint.

10 7. The method of claim 3 further comprising:

receiving a request for an action on a target endpoint within the network management framework.

8. The method of claim 7 further comprising:

15 in response to a determination that the target endpoint is a mission critical endpoint, determining whether the target endpoint is associated with a mission critical twin endpoint; and

20 in response to a determination that the target endpoint is associated with a mission critical twin endpoint, rerouting the request for the action to the mission critical twin endpoint.

9. An apparatus for managing a distributed data processing system, the apparatus comprising:

configuring means for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework;

discovering means for dynamically discovering endpoints within the distributed data processing system;

first determining means for determining that a device within the distributed data processing system has at least a first discovered endpoint representing a first network interface card and a second discovered endpoint representing a second network interface card; and

assigning means for assigning a mission criticality categorization to each discovered endpoint.

10. The apparatus of claim 9, wherein the configuring means further comprises:

first designating means for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards is a twin network interface card that is to be used for monitoring an associated network interface card; and

second designating means for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards is not to be used for monitoring.

11. The apparatus of claim 10, wherein the assigning means further comprises:

first specifying means for specifying, in response to a determination that the first discovered endpoint has a monitoring parameter indicating that the first discovered endpoint corresponds to a twin network interface card, that the first discovered endpoint is mission critical twin endpoint; and

second specifying means for specifying, in response to a determination that the second discovered endpoint has a monitoring parameter indicating that the second discovered endpoint is not to be used for monitoring, that the second discovered endpoint is mission critical endpoint.

12. The apparatus of claim 11 further comprising:

monitoring means for monitoring discovered endpoints using the network management framework.

13. The apparatus of claim 12 further comprising:

second determining means for determining, in response to a determination that a discovered endpoint is a mission critical endpoint, whether the mission critical endpoint is associated with a mission critical twin endpoint;

first performing means for performing, in response to a determination that the mission critical endpoint is associated with a mission critical twin endpoint, a polling operation on the mission critical twin endpoint;

first updating means for updating a status indication parameter for the mission critical twin endpoint.

14. The apparatus of claim 13 further comprising:

third determining means for determining whether the mission critical endpoint can be polled;

5 second performing means for performing in response to a determination that the mission critical endpoint can be polled, a polling operation on the mission critical endpoint; and

second updating means for updating a status indication parameter for the mission critical endpoint.

10 15. The apparatus of claim 11 further comprising:

receiving means for receiving a request for an action on a target endpoint within the network management framework.

16. The apparatus of claim 15 further comprising:

15 fourth determining means for determining, in response to a determination that the target endpoint is a mission critical endpoint, whether the target endpoint is associated with a mission critical twin endpoint; and

20 rerouting means for rerouting, in response to a determination that the target endpoint is associated with a mission critical twin endpoint, the request for the action to the mission critical twin endpoint.

17. A computer program product in a computer readable medium for use in a distributed data processing system for managing the distributed data processing system, the computer program product comprising:

- 5 instructions for configuring monitoring parameters for network interface cards within the distributed data processing system using a network management framework;
- instructions for dynamically discovering endpoints within the distributed data processing system;
- 10 instructions for determining that a device within the distributed data processing system has at least a first discovered endpoint representing a first network interface card and a second discovered endpoint representing a second network interface card; and
- 15 instructions for assigning a mission criticality categorization to each discovered endpoint.

18. The computer program product of claim 17, wherein the instructions for configuring monitoring parameters further
20 comprises:

- instructions for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards is a twin network interface card that is to be used for monitoring an associated
25 network interface card; and
- instructions for designating each of a plurality of network interface cards with a monitoring parameter indicating that each of the plurality of network interface cards is not to be used for monitoring.

19. The computer program product of claim 18, wherein the instructions for assigning a mission criticality categorization to each discovered endpoint further comprises:

instructions for specifying, in response to a determination
5 that the first discovered endpoint has a monitoring parameter indicating that the first discovered endpoint corresponds to a twin network interface card, that the first discovered endpoint is mission critical twin endpoint; and

instructions for specifying, in response to a determination
10 that the second discovered endpoint has a monitoring parameter indicating that the second discovered endpoint is not to be used for monitoring, that the second discovered endpoint is mission critical endpoint.

15 20. The computer program product of claim 19 further comprising:

instructions for monitoring discovered endpoints using the network management framework.

20 21. The computer program product of claim 20 further comprising:

instructions for determining, in response to a
determination that a discovered endpoint is a mission critical
endpoint, whether the mission critical endpoint is associated
25 with a mission critical twin endpoint;

instructions for performing, in response to a determination
that the mission critical endpoint is associated with a mission
critical twin endpoint, a polling operation on the mission
critical twin endpoint; and

instructions for updating a status indication parameter for the mission critical twin endpoint.

22. The computer program product of claim 21 further comprising:

instructions for determining whether the mission critical endpoint can be polled;

5 instructions for performing, in response to a determination that the mission critical endpoint can be polled, a polling operation on the mission critical endpoint; and

instructions for updating a status indication parameter for the mission critical endpoint.

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23. The computer program product of claim 19 further comprising:

instructions for receiving a request for an action on a target endpoint within the network management framework.

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24. The computer program product of claim 23 further comprising:

instructions for determining, in response to a determination that the target endpoint is a mission critical endpoint, whether the target endpoint is associated with a mission critical twin endpoint; and

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instructions for rerouting, in response to a determination that the target endpoint is associated with a mission critical twin endpoint, the request for the action to the mission critical twin endpoint.

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IX. Evidence appendix

None.

5 **X. Related proceedings appendix**

None.

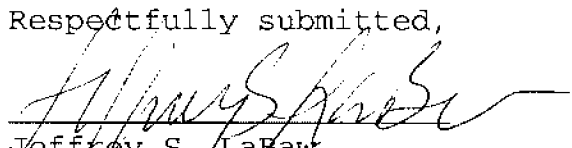
XI. Conclusion

10 In view of the above arguments, it is respectfully urged
that the rejection of the claims should not be sustained.

DATE: November 13, 2006

Respectfully submitted,

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